No. 88-1132

(2)

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

MARTIN A. FINN, Petitioner,

v.

CHEVRON U.S.A., INC., Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I.

INTRODUCTION -- THE ISSUES IN THE DISTRICT COURT

This suit involves the termination of a service station operation by a refiner because of the dealer's violations of federal law, state criminal law, and breach of contractual obligations. The dealer was selling fuel to the motoring public under the guise that it was Chevron fuel, when in fact it was not. The legal issue at trial was whether the refiner's termination notice to the dealer was timely under the requirements of the Petroleum Marketing Practices Act (PMPA), 15 U.S.C. 2801 *et seq.* (Petition Appendix D). The PMPA provides that a notice of termination must be given within 120 days after the refiner learns of the facts constituting the ground for termination.

The District Court found that the notice to the dealer was not timely. The Court of Appeals, based on admitted facts, concluded that the District Court determination was erroneous, and reversed.

II.

STATEMENT OF THE CASE

Petitioner Martin Finn (Finn) was an independent service station operator leasing a station from Respondent Chevron U.S.A., Inc. (Chevron), under the terms of a Dealer Lease and a Dealer Supply Contract, each with an effective date of November 1, 1981. (Pltf's Ex. 1 & 2, Excerpt of Record (ER) pp. 95-129.) On sixteen separate occasions during the period January 6 through October 17, 1982, Finn purchased a total of 96,002 gallons of gasoline and diesel fuel from Crown

Petroleum, an independent jobber not connected with Chevron. (Chevron's Ex. 4, ER 134.) Finn put this fuel into Chevron's tanks, commingling it with Chevron fuel, pumped it out through Chevron's pumps, and sold this fuel under Chevron's logos and trademarks, *i.e.*, passed it off to the motoring public as Chevron fuel. (Pretrial Order, Admitted Facts 11-18, ER 21 & 22.)

These practices violated sections 32(1) and 43(a) of the Lanham Trademark Act, 15 U.S.C. §§ 1114(1) and 1125(a); and violated two Washington criminal law provisions, RCW 9.16.040, which prohibits displaying goods with a false trademark, and RCW 9.16.080, which prohibits the sale of improperly labeled petroleum products. (Appendix A to this brief contains these statutory provisions.)

These actions also violated paragraph 6(b) of Finn's Dealer Lease, which prohibits using Chevron trademark equipment for non-Chevron products; and violated three provisions of Finn's Dealer Supply Contract: 2(b), which requires compliance with all applicable federal and state laws; 4(a), which prohibits the sale of non-Chevron products under the Chevron trademark and prohibits commingling of products; and 4(b), which prohibits use of Chevron's signs in connection with the sale of non-Chevron products. (ER 99, 114 and 116.)

The actions were grounds for termination of the Dealer Lease under paragraph 7(b)(5), which provides for termination for "willful adulteration, commingling, mislabeling or misbranding of

motor fuels or other violations by Dealer of trademarks utilized by Chevron;" and paragraph 7(b)(8), which provides for termination for "unlawful, fraudulent or deceptive acts or practices or criminal misconduct by Dealer relevant to the operation of the premises." (ER 100.) The actions were grounds for termination of the Dealer Supply Contract under paragraph 7(b)(4), for knowingly failing to comply with federal or state laws relevant to the use or operation of the premises; 7(b)(5) for willful adulteration, commingling, mislabeling or misbranding of motor fuels or violation of Chevron trademarks; and 7(b)(7), which provides for termination for engaging in unlawful, fraudulent or deceptive acts or practices or criminal misconduct. (ER 119.)

At trial there was no dispute with regard to these violations by Finn. In the Admitted Facts section of the Pre-Trial Order, Finn acknowledged that all pumps, tanks and containers at the station were supplied by Chevron; that he understood that such pumps, tanks and containers were to be used solely for the storing, handling and dispensing of Chevron products; that during the period January 6, 1982 through October 7, 1982 he received delivery of sixteen loads of fuel from Crown Petroleum totaling 96,002 gallons; that he put this fuel into Chevron's tanks and sold it through pumps bearing the Chevron trademark; that the fuel was commingled with Chevron fuels; and that when selling the fuel he did not use any device to block out the Chevron

trademark. (Pre-Trial Order, Admitted Facts 11-18; ER 21-22.)

At trial there was no issue concerning Chevron's right to terminate Finn for the above-described violations. The District Court Judge stated in her oral decision:

> That Finn did indeed buy non-Chevron products and sell them without changing the Chevron names on the pumps and at his station is clear from the facts. That that is indeed a violation of the terms of the lease is also clear from the facts and really is essentially undisputed.

Petition for Certiorari, Appendix B, page B-3.

The legal issue at trial was whether Chevron's notice to terminate Finn was given in timely fashion. The PMPA provides that a failure by the franchisee (dealer) to comply with any provision of the franchise is a ground for termination

"if the franchisor first acquired actual or constructive knowledge of such failure . . . not more than 120 days prior to the date on which notification of termination . . . is given." 15 U.S.C. 2802(b)(2)(A)(i). (Petition, Appendix D, pp. D-11 and D-12.)

Chevron's evidence showed that no one at Chevron had notice or knowledge concerning Finn's outside fuel purchases until December 1983. The three Chevron retail sales representatives responsible for working with Finn each testified that they never received any notice or had any knowledge. (Westphal, Transcript of Record, Vol I, TRI 37-50; Downs TRI 51-53; and Lettich TRI 54-60.) Chevron Area Retail Manager William Wynn testified that he had no knowledge until early December

1983 when he was advised by by Chevron's landlord (Chevron was leasing the property and subleasing to Finn) that there was information Finn had purchased fuel on the outside. (TRI 62-63.) Wynn questioned Finn about such purchases. Finn denied them. (TRI 63.) Confirmation and details concerning the purchases were received December 21, 1983, during a deposition of a Crown Petroleum employee in an unrelated lawsuit. (TRI 17 and 29; Chevron's Ex. 4, Summary of Purchases, ER 134; Appendix B to this brief.)

Chevron's termination notice was delivered to Finn on February 28, 1984. (Pre-Trial Order, Admitted Fact 19; Pltf's Ex. 3, ER 22 and 127.) Thus the termination notice, according to Chevron's evidence, was timely under the require-

ments of the PMPA, since it was given within 120 days after Chevron received notice of Finn's violations of the contracts.

Finn testified that on March 28, 1981 he had a meeting with Chevron representative Westphal concerning Chevron holding up a delivery because of Finn's credit problems, and Finn testified the conversation included his statement that he "might" get fuel elsehwere if he could not get it from Chevron. (RTI 86-91.) This conversation was over seven months prior to the November 1, 1981 effective date of the Dealer Lease and Dealer Supply Contract at issue in this case, and over nine months prior to Finn's first outside purchase of fuel on January 6, 1982. Finn also testified that he informed Westphal

concerning the first five outside purchases of fuel which occurred January 6 and 24, February 15 and 17, and April 22, 1982. (TRI 94-96, 111-113; Summary of Purchases, Chevron's Ex. 4, Appendix B to this brief.)

It is undisputed, however, that Chevron never was advised about the next 11 purchases of outside fuel which occurred between April 29 and October 7, 1982. Finn's deposition testimony, read into the record at trial, is as follows:

> A. From six to sixteen no, I did not.
>
> Q. We are talking about the deliveries six through sixteen which appear on Exhibit 4?
>
> A. Yes.
>
> Q. Your're telling me as to each of those deliveries you did not inform anyone at Chevron?

A. Right.

(June 20, 1984 Deposition of Finn, p. 81, lns. 13-19; Read by Trial Court, TRI 14-29.)

The trial court concluded that even though no notice had been given to Chevron of the last 11 purchases of outside fuel, Chevron could not terminate Finn based on such purchases because Finn over a year earlier had advised a Chevron representative that he "might" make future outside purchases of fuel, and thus, under the PMPA, Chevron's termination notice was untimely. The Court of Appeals determined that such conclusion was erroneous and reversed.

III.

FINN'S MISSTATEMENT OF FACTS IN THE PETITION

1. On page 4 of his petition for a Writ of Certiorari Finn asserts that after

the Ninth Circuit reversal Chevron terminated the contracts. The fact is that Finn terminated the contracts. Appendix C to this brief is a true copy of Finn's October 20, 1988 notice to Chevron by which he terminated the Dealer Lease and Dealer Supply Contract.

2. On page 5 in the petition Finn asserts he purchased outside fuel because Chevron repeatedly failed to deliver fuel to him. Finn fails to mention that his difficulty in getting fuel from Chevron was the result of Chevron's reluctance to deliver fuel to him on credit, because of Finn's continued delivery of nonsufficient fund checks to Chevron in payment for fuel, 31 checks in all, each of which was in the thousands of dollars. (TRI:86, 110-111, and 167.)

3. On page 5 of the Petition Finn asserts that the contracts required him to purchase and sell only Chevron products. Both contracts, however, had provisions for the selling of other companies' fuels. (Dealer Lease, ¶ 6(b), ER 99; Dealer Supply Contract, ¶ 2(a), ER 114.) The only restriction was placing another company's fuel in Chevron's tanks and selling it through Chevron's pumps using Chevron logos. Chevron's Exhibit A-5 is a memorandum from Finn's files, prepared by a Finn employee, which sets forth Chevron's policy that outside fuel could be purchased so long as steps were taken to protect the integrity of Chevron's tanks and the Chevron logos were covered. (ER 135-136; RTI 182.)

4. On page 6 of the Petition Finn asserts that Crown Petroleum was another

Chevron dealer. Admitted Fact 12 in the Pre-Trial Order recites that Crown Petroleum does not distribute its own products, purchasing products from other companies for resale. (ER 21.) Chevron's area retail manager testified that Chevron does not sell to Crown Petroleum. (RTI 62.) The general manager of Crown Petroleum testified it purchased its fuel from Disoro, Tosco, PRI, Union, Shell, Arco and Texaco. (RTI 138-139.)

5. On pages 7 and 8 in his Petition Finn states that the meeting at which he told the Chevron representative he might purchase outside fuel whenever Chevron was unable to fill his orders took place in January 1982, at the time such outside purchases commenced. Finn testified at trial, however, that this conversation

took place March 28, 1981, almost 10 months prior to the first such delivery. (RTI 86, lns. 19-24, and p. 90, ln. 25 through p. 91, ln. 2.)

6. Finally, on page 8 in his Petition, Finn states that in January 1982 he handed a Chevron sales representative a copy of an invoice "showing these outside purchases," implying Chevron was given notice then of all 16 purchases. Only the first two of the 16 purchases occurred in January 1982. (*See* Summary, Appendix B.) Finn testified at trial that the January meeting involved only the invoice for the first purchase. (TRI Finn June 20, 1984 Deposition read at trial, pp. 72-74.) Finn admitted he told no one at Chevron about deliveries 6 through 16. (Finn June 20, 1984 deposition, p. 81, read at

trial, TRI 14, quoted on page 11 of this brief.)

IV.

REASONS FOR DENYING THE PETITION

A. The Court Of Appeals Heeded The Limitations On Appeals Set Forth In Federal Civil Rule 52(a).

With regard to appellate review of a non-jury trial Civil Rule 52(a) provides:

> Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.

The District Court found, on disputed evidence, that Finn advised Chevron concerning his first five purchases of non-Chevron fuel. The Court of Appeals accepted this finding of fact. With regard to the next 11 purchases of outside fuel, the four Chevron representatives

testified that they had no knowledge, and Finn admitted that he told no one at Chevron concerning such purchases. In the face of this undisputed evidence the District Court concluded, based on Finn's testimony that 10 months prior to the first purchase he told a Chevron representative he might make purchases of outside fuel, that Chevron was on notice as to all such future purchases. In so concluding the District Court ignored settled case law that each new breach of a contract by a dealer is a new event justifying termination under the PMPA. (The case law is discussed below at pp. 22-24.) The Court of Appeals correctly disagreed with the District Court's conclusion and held, based on the undisputed facts, that Chevron's first notice of the 11 sub-

sequent purchases was on December 21, 1983, when the Crown Petroleum deposition took place, and thus Chevron's February 28, 1984 notice was within the 120 days required by the PMPA.

This ruling by the Court of Appeals is supported on a number of grounds.

1. The District Court's conclusion was clearly erroneous. "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 394-95, 68 S. Ct. 525, 92 L. Ed. 746, 766 (1948).

2. The District Court's conclusion was a ruling on a mixed question of

fact and law which is freely reviewable on appeal. *Schultz v. Wheaton Glass Co.*, 421 F.2d 259, 267 (3d Cir. 1970), *cert. denied* 90 S. Ct. 1696, 398 U.S. 905, 26 L. Ed. 2d 64; *Official Creditors Committee of Fox Markets Inc. v. Ely*, 337 F.2d 461, 467 (9th Cir. 1964), *cert. denied*, 85 S. Ct. 1342, 380 U.S. 978, 14 L. Ed. 2d 272; and *U.S. v. Gypsum, supra*.

3. The District Court's ruling concerning notice is not a finding on basic facts but an inference derived from the basic facts. Where facts are undisputed and credibility of witnesses is not involved, and the trial court's ruling is an inference drawn from the facts, the appellate court may freely draw different inferences. *United States v. O'Brien*, 273 F.2d 495 (3d Cir. 1959). Where the trial

court's holdings are "ultimate facts" which "are simply the result reached by processes of legal reasoning from, or the interpretation of the legal significance of, the evidentiary facts, they are subject to review by this Court free from the restraining influence of the 'clearly erroneous' rule . . . ." *Bullock v. Tamiami Trail Tours, Inc.*, 266 F.2d 326, 330 (5th Cir. 1959).

4. The District Court's conclusion was based on an erroneous interpretation of law, as discussed below at pp. 22-24. Where the trial court has operated under a misapprehension of the law that affects its findings, the "clearly erroneous" standard no longer is applicable. *U.S. v. Gypsum, supra.* at 333 U.S. 394; *TMT Trailer Ferry v. Anderson*, 390 U.S.

414, 444-445 (1968) 20 L. Ed. 2d 1; *Ritter v. Morton*, 513 F.2d 942 (9th Cir. 1975), *cert. denied*, 423 U.S. 947, 96 S. Ct. 362, 46 L. Ed. 2d 281 (1975).

5. The District Court's holding also was a conclusion of law and the "clearly erroneous" test does not apply. *District of Columbia v. Seven-Up Washington, Inc.*, 214 F.2d 197 (D.C. Cir. 1954), *cert. denied*, 74 S. Ct. 851, 347 U.S. 989, 98 L. Ed. 1123; and *American National Bank of Austin v. United States*, 421 F.2d 442 (5th Cir. 1970), *cert. denied*, 400 U.S. 819, 91 S. Ct. 36, 27 L. Ed. 2d 4 (1971).

B. <u>The Trial Court's Holding Concerning Notice Was Based On A Misapprehension Of Law; Affirmance Of Such Ruling By the Court Of Appeals Would Be In Conflict With Decisions By Other Federal Courts</u>.

The District Court treated Finn's March 28, 1981 statement that he might

purchase outside fuel in the future as constructive notice of all future violations involving commingling and misbranding of fuel. It is well established, however, that under the PMPA each separate violation of a dealer franchise agreement is an event which commences the running of a new 120 day period for termination. *Gruber v. Mobil Oil Corp.*, 570 F. Supp. 1088 (E.D. Mich. 1983); *Escobar v. Mobil Oil Corp.*, 522 F. Supp. 593 (D. Conn. 1981); *Walters v. Chevron U.S.A., Inc.*, 476 F. Supp. 353 (N.D. Ga. 1979). In *Amoco Oil Co. v. D.Z. Enterprises, Inc.*, 607 F. Supp. 595 (E.D.N.Y. 1985) the dealer, like Finn, sold non-Amoco gasoline through the Amoco branded pumps violating the Amoco trademark, violating both the Landham Act and

state law. The court stated: "Where there are repeated occurrences of the violative conduct, each new event is a ground for termination." Finally in *Wisser Co., Inc. v. Mobil Oil Corp.*, 730 F.2d 54 (2d Cir. 1984) passing off gasoline from another refiner as Mobil's was ground for termination of the franchise and the court quoted from the legislative history: "[T]he time limitations are not intended to stop a franchisor from exercising termination . . . based upon a future event which constitutes a ground for termination . . . , even if such future event is a repeat occurrence of an event with respect to which the previous exercise of termination . . . rights was waived." 1978 U.S. Cong. & Ad. News at 892.

On page 22 of his petition, Finn argues that his March 26, 1981 conversation with the Chevron representative was an "anticipatory repudiation" of his contractual duties. It is difficult to understand how one can repudiate a contractual obligation by stating that he "might" violate it in the future. It is clear that a statement of intent is not proof that the actor will follow through. *United States v. Washington Water Power Co.*, 793 F.2d 1079, 1082 (9th Cir. 1986). Finally, both the Dealer Lease and the Dealer Supply Contract contained an express provision that Chevron's waiver of any breach or default was "not to be deemed to be a waiver of any other or continuing breach or default . . . ." (ER 101 and 120.)

C. The Court of Appeals Gave Effect To The Congressional Purpose Underlying The Petroleum Marketing Practices Act.

At page 27 Finn argues that the primary purpose of the PMPA is to protect gas station owners from unreasonable, arbitrary or discriminatory termination. Chevron does not dispute this statement. Finn then goes on to assert that in some way the Court of Appeals decision allows an oil company to ignore the 120 day notice requirement. The Court of Appeals decision, however, does just the opposite. It enforces the requirement of the 120 day notice. The opinion also enforces the congressional intent, set forth at p. 24 in this brief, that the "time limitations are not intended to stop a franchisor from excercising termination . . . based upon a future event which constitutes a ground for termination."

V.

CONCLUSION

The District Court was clearly erroneous in concluding that Finn's statement to Chevron's representative, that he might purchase outside fuel in the future, was notice to Chevron concerning 11 future instances in which Finn violated federal law, state law, and contractual provisions, by commingling fuels and by selling outside fuels to the motoring public under the guise that it was Chevron's product. Further, for the reasons set forth on pp. 20-22 of this brief, such District Court conclusion was freely reviewable by the Court of Appeals. Finn's petition, therefore, fails to meet the criteria for issuance of a writ of certiorari, and must be denied.

Respectfully submitted.

DATED this 2nd day of January, 1989.

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9TWH3/84-0314

APPENDIX A

Statutory Provisions Violated By Petitioner Finn

1. Sections 32(1) and 43(a) of the Lanham Trademark Act 15 U.S.C. #1114(1) and 1125(a)

§ 1114. Remedies; infringement; innocent infringement by printers and publishers

(1) Any person who shall, without the consent of the registrant—

(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

(b) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.

shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under subsection (b) of this section, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

§ 1125. False designations of origin and false descriptions forbidden

(a) Any person who shall affix, apply, or annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, including words or other symbols tending falsely to describe or represent the same, and shall cause such goods or services to enter into commerce, and any person who shall with knowledge of the falsity of such designation of origin or description or representation cause or procure the same to be transported or used in commerce or deliver the same to any carrier to be transported or used, shall be liable to a civil action by any person doing business in the locality falsely indicated as that of origin or in the region in which said locality is situated, or by any person who believes that he is or is likely to be damaged by the use of any such false description or representation.

2. Title 9, Revised Code of Washington, Crimes and Punishments; Chapter 9.16, Brands and Marks, Crimes Relating to:

9.16.040 Displaying goods with false trademark. Every person who shall knowingly sell, display or advertise, or have in his possession with intent to sell, any goods, wares, merchandise, mixture, preparation or compound having affixed thereto any label, trademark, term, design, device, or form of advertisement lawfully filed for record in the office of the secretary of state by any person, corporation, association or union, or the exclusive right to the use of which is guaranteed to such person, corporation, association or union under the laws of the United States, which label, trademark, term, design, device or form of advertisement shall have been used or affixed thereto without the written authority of such person, corporation, association or union, or having affixed thereto any forged or counterfeit representation, likeness, similitude, copy or imitation thereof, shall be guilty of a misdemeanor. [1909 c 249 § 345; RRS § 2597.]

9.16.080 Sales of petroleum products improperly labeled or by wrong grade. It shall be unlawful for any person, firm or corporation:

(1) To use, adopt, place upon, or permit to be used, adopted or placed upon, any barrel, tank, drum or other container of gasoline or lubricating oil for internal combustion engines, sold or offered for sale, or upon any pump or other device used in delivering the same, any trade name, trademark, designation or other descriptive matter, which is not the true and correct trade name, trademark, designation or other descriptive matter of the gasoline or lubricating oil so sold or offered for sale;

(2) To sell, or offer for sale, or have in his or its possession with intent to sell, any gasoline or lubricating oil, contained in, or taken from, or through any barrel, tank, drum, or other container or pump or other device, so unlawfully labeled or marked, as hereinabove provided;

(3) To sell, or offer for sale, or have in his or its possession with intent to sell any gasoline or lubricating oil for internal combustion engines and to represent to the purchaser, or prospective purchaser, that such gasoline or lubricating oil so sold or offered for sale, is of a quality, grade or standard, or the product of a particular gasoline or lubricating oil manufacturing, refining or distributing company or association, other than the true quality, grade, standard, or the product of a particular gasoline or oil manufacturing, refining or distributing company or association, of the gasoline or oil so offered

APPENDIX B

Summary of Finn's Outside Purchases of Fuel, Plaintiff's Ex 4, ER 134

Summary of Ex. 4 (PLTF)

	Crown Invoice Number	Delivery Date	Gallons of Product G-Gas D-Diesel	Order # on Receipt or Invoice	Order # on Source Document	Meter Ticket # on Receipt or Invoice	Meter Ticket #	Source	Supplier
1.	0477	1-6-82	9000 D.	4869	4869	745787	745787	PRI	ARCO
2.	0541	1-24-82	9000 D.	84	84	84	745788	PRI	
							101172	Tosco	
3.	116-0671	2-15-82	2000 G. 7900 D.	116	116	91846	91846	Tosco	
4.	T-91851-52	2-17-82	3401 G. 4501 G. 2001 D.	121	121 121	91851 91852	91851 91852	Tosco Tosco	
5.	0992	4-22-82	4500 D.	9994	0994	R16015	E16015	PRI	
6.	222-1027	4-29-82	3400 G. 2000 G. 4500 D.	222	222	92685	92685	Tosco	
7.	7021-1016	5-11-82	1500 G. 4800 D.	7021	7021	21312 030244	21312 030244	PRI	Shell
8.	PRI-1069	5-21-82	4500 D.	PRI	PRI	16127	16127	PRI	
9.	1119	5-24-82	2350 G. 2150 G.	119		17378 17379	17378 17379	PRI PRI	
10.	1138	6-1-82	4500 D.	1138		16049	16049	PRI	
11.	7206-1167	6-7-82	1000 G. 3000 G.	7206	7206	066604 083497	066604 083497	PRI PRI	Shell Shell
12.	1304	7-20-82	3000 G. 2500 G.	1304		18585 18585	18585 18585	PRI PRI	
13.	1455	8-14-82	500 G. 2000 G.	1455		543450 575095	543450 575095	Union Union	Union Union
14.	1457	8-15-82	2500 G.	1457		543468 575101	543468 575101	Union Union	Union Union
15.	1117	8-25-82	5000 D.	1117		707116 287832	707116 287832	Texaco Texaco	Texaco Texaco
16.	1723	10-7-82	4499 D.	1723		292426	292426	Texaco	Texaco

Total Gallons: 96,002

Diesel: 60,200

Gas: 35,802

APPENDIX C

Finn's October 20, 1988 Notice to Chevron Terminating the Dealer Lease and the Dealer Supply Contract

Truck Village, Inc.
1511 S. 348th
Federal Way, Washington 98003

October 20, 1988

TO: Chevron, and its marketing representative, Larry Hills

Dear Sirs:

Pursuant to Section (7) of the Dealer Lease that has been in effect since November 1, 1981, you are hereby given this notice of my termination of the Dealer Lease and the Supply Contract for the premises at 1511 S. 348th, Federal Way, Washington, 98003, effective at 0001 hrs, October 31, 1988.

Any further communications following that time may be made through my attorney, Gregory O. DeBay, 2755 S.W. 323rd St., Federal Way, WA 98023, phone number (206) 838-4404.

Yours very truly,

Martin A. Finn